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No. 928

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL NUMBER 1810, RALPH A. MASSEY AND THOMAS J. BURKE, *Petitioners*

v.

GEORGIA PORTS AUTHORITY, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

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of the
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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

To The Honorable Chief Justice and Associate Justices of The Supreme Court of The United States:

International Longshoremen's Association, International Longshoremen's Association, Local Number 1810, Ralph A. Massey and Thomas J. Burke, herein collectively called Petitioners, respectfully pray that a Writ of Certiorari issue out of and under the seal of this Court, to review the decision and judgment of the Supreme Court of

Georgia entered in the above entitled case decided on March 8, 1962.

The judgment of the Supreme Court of Georgia affirmed the final judgment of the Superior Court of Chatham County, Georgia, permanently restraining and enjoining Petitioners and their agents, servants and employees from picketing the Garden City Terminals and the Ocean Terminals of the Georgia Ports Authority or picketing in the vicinity thereof.

OPINION BELOW

The Opinion and Judgment of the Supreme Court of Georgia has not been officially reported but a copy thereof is attached hereto as Appendix "A". Such decision of the Supreme Court of Georgia, is also included in the Certified Transcript of the Record of the Supreme Court of Georgia in this case at Pages 79 through 89.

Also the rulings of the Superior Court of Chatham County, Georgia, on the Motions for Summary Judgment granting the Motion of Appellee for Summary Judgment and refusing the Motion of Appellants are included in the Certified Transcript of the Record of the Supreme Court of Georgia in this case at Pages 53 through 57 thereof.

JURISDICTION

The final decision and judgment of the Supreme Court of Georgia, here sought to be reviewed, was decided by that Court on March 8, 1962.

The jurisdiction of this Court to Review by Writ of Certiorari the final judgment of the Supreme Court of Georgia, here complained of, is conferred by Title 28, *U.S.C.A.* Section 1257 (3).

QUESTIONS PRESENTED

1. Does the National Labor Relations Board have exclusive primary jurisdiction to hear and decide the issues involved in this case?

2. Do the statutes and decisions of the Courts of Georgia govern and control the rights and conduct of employees of the Georgia Ports Commission or are their rights and conduct governed and controlled by the *Labor Management Relations Act of 1947 as amended* and by the decisions of the Supreme Court of the United States?

3. Did the Supreme Court of Georgia in its final decision in this case correctly adjudicate and determine the rights and conduct of the employees of the Georgia Ports Commission, such employees being members of Local Union No. 1810, of the International Longshoremen's Association?

4. Were the efforts by such employees, acting through Ralph A. Massey, to induce the Georgia Ports Authority to negotiate a collective bargaining contract with its employees, authorized under Section 7 of the Labor-Management Relations Act of 1947 as amended?

5. Was the peaceful picketing of the properties of the Georgia Ports Authority by such employees a right and privilege guaranteed to them by Section Seven of the Labor-Management Relations Act of 1947 as amended?

6. Was the enjoining of such peaceful picketing by the state courts of Georgia authorized and valid?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The First Amendment to the Constitution of the United States is as follows:

"Congress shall make no law on establishment of religion or prohibiting the free exercise thereof; or prohibiting the freedom of speech or of the press or the right of the people peaceably to assemble and to petition the government for a redress of grievances."

The pertinent portions of the Fourteenth Amendment being Sections One and Five of the Constitution of the United States are as follows:

Sec. One: "No state shall make or enforce any law which shall abridge the privileges or ammunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law; nor to deny to any person within its jurisdiction the equal proteetion of the laws."

Sec. Five: "The Congress shall have power to enforce by appropriate legislation the provisions of this Article."

THE PERTINENT PROVISIONS OF THE LABOR-MANAGEMENT RELATIONS ACT OF 1947 AS AMENDED ARE AS FOLLOWS:

29 *U.S.C.A.* Section 152 (a):

"The term 'employer' includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government Corporation, or any Federal Reserve Bank or any State or political subdivision thereof, etc."

29 *U.S.C.A. Section* 157, reads as follows:

Sec. 157: "Employees shall have the right of self-organization, to form, join or assist labor organizations, to bargain collectively through representatives

of their own choosing and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, etc."

29 *U.S.C.A.* Section 158(a) states:

"(a) It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain or coerce employees in the exercise of the rights guaranted in Section 157 of the title.

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.

(5) to refuse to bargain collectively with the representatives of his employees subject to the provisions of Section 159(a) of this title."

The portions of the Georgia Constitution and statutes which this case involves are stated in Appendix "B" attached hereto.

STATEMENT OF THE CASE

A. The Facts

Local Union No. 1810 of the International Longshoremen's Association is a labor organization located in Savannah, Georgia and it is affiliated with the International Longshoremen's Association. (Cert. Tr. Page 16).

Its membership numbered approximately seventy persons many of whom were, upon the date the picketing of the two properties of the Georgia Ports Authority occurred, employees of that Authority. (Cert. Tr. Pages 60 and 69).

The Georgia Ports Authority was created by certain statutes of the State of Georgia (See Appendix "B" attached hereto). That Authority is engaged in proprietary activities in the operation of wharves and docks at the Port of Savannah, Georgia.

Ships from many parts of the world docked at those wharves and loaded and unloaded cargoes of various kinds.

The operations of the Georgia Ports Authority and the activities of the employees of Georgia Ports Authority substantially affected interstate commerce upon the date the peaceful picketing of its properties by its employees occurred, and for a long period of time prior to that date.

These facts are not disputed. (Cert. Tr. Pages 61, 62, 63 and 67).

The employees of the Georgia Ports Authority contended on and prior to the date the peaceful picketing began, that the wages paid to them and the working conditions existing at the Authority's wharves and docks in Savannah, Georgia, were substandard. (Cert. Tr. Pages 68 and 69).

Their efforts to improve their wages and working conditions had met with no success. (Cert. Tr. Pages 68 and 69).

The Defendants Ralph A. Massey and Thomas J. Burke were, on and prior to the date the picketing occurred, officers of the South Atlantic & Gulf Coast District of the International Longshoremen's Association and were assisting the members of Local Number 1810, an affiliate of such District, in their efforts to improve their wages and working conditions at the wharves of Georgia Ports Authority. (Cert. Tr. Pages 16 and 17).

As a part of the efforts to improve their wages and working conditions, Massey submitted to the Executive

Director in charge of the Savannah, Georgia docks of the Georgia Ports Authority a form of collective bargaining contract which he proposed, in letters to the Executive Director, as a basis for negotiations between the Ports Authority and Local Union No. 1810.

These letters were dated September 6, October 7, and October 25, 1960. (Cert. Tr. Pages 64, 65 and 66).

The Ports Authority declined to negotiate on a collective bargaining agreement and wages and working conditions on the Ports Authority's docks and wharves at Savannah, Georgia, remained unchanged. (Cert. Tr. Pages 68 and 69).

On December 8, 1960, the members of Local Union Number 1810 who were employees of the Georgia Ports Authority, placed two of their members on picket lines at two of the Savannah wharves of the Ports Authority.

These two picket lines were established upon public streets near the two wharves. (Cert. Tr. Pages 59, 60 and 69).

The picket signs contained the following words.

"State Docks, Unfair to I.L.A.-C.I.O." (Cert. Tr. Page 59).

On December 8, 1960, the day the picketing began, a Judge of the Superior Court of Chatham County, Georgia, upon the Petition of Georgia Ports Authority, issued an exparte order temporarily restraining the International Longshoremen's Association, Local Number 1810 and its members and Ralph A. Massey and Thomas J. Burke, from picketing the Garden City Terminals and the Ocean Terminals of the Georgia Ports Authority and ordered those Defendants to appear before the Superior Court of Chatham County, Georgia on December 20.

1960, to show cause why such injunction order should not be continued in force and effect. (Cert. Tr. Page 31). Said injunction was continued in force and effect. (Cert. Tr. Pages 49 and 50).

On October 18, 1961, the Superior Court of Chatham County, Georgia, entered an order (Cert. Tr. Pages 53 through 57) which provided in part that the Federal Statutes and procedures are not applicable to this case and that it is against the public policy of the State of Georgia for the employees of the Georgia Ports Authority to strike, they being employees of the State of Georgia (Cert. Tr. Pages 54 and 56) and that the activities of such employees constituted a strike.

In such order the Court granted a summary judgment in favor of Georgia Ports Authority and permanently enjoined the Defendants, who are the Petitioners herein. (Cert. Tr. Page 56).

The case was thereafter appealed to the Supreme Court of Georgia.

That Court rendered its final decision in this case on March 8, 1962.

A copy of the final judgment of the Supreme Court of Georgia is attached to this Petition for Writ of Certiorari. A copy of such final judgment is also included in the Certified Transcript of the Record of the proceedings of this case in the Supreme Court of Georgia which is being filed in this Court with this Petition for Writ of Certiorari. (Cert. Tr. Pages 79 through 88).

FEDERAL QUESTIONS INVOLVED

The Federal questions which these Petitioners seek to have this Court review were timely raised by them in

the Superior Court of Chatham County, Georgia by special and general demurrers and in a Motion to Dismiss and in the Defendants' Answer filed in the Superior Court. (Cert. Tr. Pages 4, 5, 38, 41, 42 and 44).

The Superior Court overruled such special and general demurrers and Motion to Dismiss and held adversely to the Defendants in such proceeding as shown by the order entered on the 13th day of July, 1961. (Cert. Tr. Pages 44 to 50).

These federal questions were timely raised by your Petitioners in the Supreme Court of Georgia by the filing in that Court of the complete transcript of the entire record of the pleadings, evidence, exceptions, orders and judgment in this case of the Superior Court of Chatham County, Georgia as stated in the Certificate of the Clerk of that Court (Cert. Tr. Page 91) and by these Petitioners presenting, briefing, arguing from the transcript of the proceedings in the Superior Court of Chatham County, Georgia and urging in the Supreme Court of Georgia each of the federal questions mentioned in the certified transcript of the proceedings in this case of the Superior Court of Chatham County, Georgia (Cert. Tr. Pages 1 to 6: 8 through 10: 12: 42: 44 through 50: 53 through 57).

This is also reflected in part at least by the final judgment of the Supreme Court of Georgia. (Cert. Tr. Pages 79 through 88).

The Supreme Court of Georgia after giving consideration to such federal questions, rendered its final decision in this case on March 8, 1962, and therein decided all such federal questions adversely to these Petitioners. (Cert. Tr. Pages 79 through 88).

THE OPINION AND FINAL JUDGMENT OF THE SUPREME COURT OF GEORGIA

The Supreme Court of Georgia in its final judgment in this case (Cert. Tr. Pages 79 through 88) states that the questions of law presented by the pleadings and evidence in this case are:

(a) Is the Georgia Ports Authority an employer under the *National Labor Relations Act* (29 U.S.C.A. 152, (2) (3) and subject to its jurisdiction? and

(b) If it is not so subject to the Act was it error to enjoin the Defendants from engaging in peaceful picketing? (Cert. Tr. Page 80).

The opinion of the Supreme Court of Georgia refers to the demurrer, motion to dismiss and to the defendants' answers filed in the Superior Court wherein the federal questions as to jurisdiction of the state courts and the other federal questions were raised. (Cert. Tr. Page 80).

The Supreme Court of Georgia in its final judgment further decides that the Georgia Ports Authority is a "body corporate and politic and is deemed to be an instrumentality of the State of Georgia and a public corporation," (Cert. Tr. Page 82) and that as an employer it comes within the exception provision of the National Labor Relations Act and is not subject to the jurisdiction of the Board. (Cert. Tr. Pages 83 and 84).

The final judgment of the Supreme Court of Georgia then holds that the statutes of the State of Georgia and the decisions of the state courts of Georgia are controlling in its decision of this case. (Cert. Tr. Pages 82 through 85).

The final judgment of that Court then decides that the First and Fourteenth Amendments of the United States Constitution do not protect peaceful picketing which is

malevolent and for the purpose of injuring an employer and aiding an unlawful strike. (Cert. Tr. Pages 85 and 86).

That Court's judgment held that the conduct of the members of Local Union No. 1810 was a strike which violated the public policy of the State of Georgia and was therefore unlawful. (Cert. Tr. Page 86).

That Court also based its final judgment upon a Statute of Georgia signed by the Governor five days before the Supreme Court of Georgia rendered its decision in this case and during the period when that Court was considering its decision. (Cert. Tr. Pages 86 and 87).

Such final judgment also held that the letters from Massey constituted an unlawful demand upon the Ports Authority to sign an unlawful collective bargaining agreement. (Cert. Tr. Pages 87 and 88).

The judgment of the Supreme Court of Georgia is a final judgment and no other proceedings in that Court have been directed, are in process or are contemplated.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

I.

THE DECISION OF THE SUPREME COURT OF GEORGIA INVOLVES ISSUES OF SUFFICIENT IMPORTANCE AND IMPACT TO WARRANT REVIEW BY THIS COURT.

This case involves the primary jurisdiction of the National Labor Relations Board and the invasion by the Legislature and Courts of the State of Georgia of the field of labor relations preempted by the Congress in the Labor-Management Relations Act of 1947 as amended.

In addition thereto the final judgment of the Supreme Court of Georgia does not recognize the law as established by the decisions of this Court and also is in direct conflict with the following decisions:

Weber v. Anheuser Busch, Inc., 75 Sup. Court, 480;
Amalgamated Association v. Wisconsin Board, 71 Sup. Court 359;
San Diego Council v. Garmon, 79 Sup. Court 773;
Amalgamated Association v. Fairlawn, 77 Sup. Ct. 64;
Plumbers Union v. County of Door, 79 Sup. Court 844;
Local Union v. New York, New Haven & Hartford, 76 Sup. Court 227;
Guss v. Utah Board, 79 Sup. Court 604;
Hill v. Florida, 325 U.S. 538.

Also that final judgment conflicts with the principles of law stated in *Local 174, Teamsters v. Lucas Flour Mills*, 82 Sup. Court 571, which requires state courts to apply the principles of federal law in deciding cases involving the issues such as are in this case.

The Supreme Court of Georgia in its final judgment declined to apply the federal law to the issues in this case but decided this case in conformity with the statutes of the State of Georgia and with the decisions of the state courts of Georgia.

The hereinbefore cited decisions of the Supreme Court of the United States establish and settles the supreme law to be:

1st: That the National Labor Relations Board has exclusive primary jurisdiction to hear and determine the issues in controversies of the kind involved in this case.

2nd: That the hearing and deciding of issues such as are

involved in the controversies in this case, is not within the primary jurisdiction of either federal or state courts.

3rd: That the Congress by vesting in the National Labor Relations Board primary jurisdiction over labor relations which affect interstate commerce has completely displaced state power to regulate or control such matters.

4th: That even though the conduct of the employees violates a state statute or decisions of state courts, state courts should decline jurisdiction if the facts arguably or reasonably bring the controversy within the prohibition or protection of the Labor-Management Relations Act.

5th: That the principles so established by the Supreme Court of the United States displacing the power of the states to regulate labor relations which affect interstate commerce, deprive state courts of all jurisdiction in deciding such matters even though the National Labor Relations Board has or obviously will decline jurisdiction.

6th: That no state statute or state court decision is valid which denies to employees, whose work affects interstate commerce, the right to engage in concerted activities such as peaceful strikes and peaceful picketing for the purpose of inducing an employer to collectively bargain with them or for the mutual aid or protection of such employees.

7th: That any state statute or state court decision which interferes with the National Labor policies as stated in the Labor-Management Relations Act of 1947, as amended, or as stated in any related federal legislation, is invalid.

8th: That the federal pre-emption doctrines apply whether the conduct of the employees charged, is proscribed or protected by the Labor-Management Relations Act of 1947, as amended.

9th: That such Labor-Management Relations Act governs and controls the right and conduct of governmental bodies of a state and of the employees of such governmental bodies.

10th: That such final judgment of the Supreme Court of Georgia being in conflict with the principles of law established by this Court in the decisions herein cited, is invalid.

II.

Peaceful picketing by employees in controversies of the kind involved in this case, where the business of the employer and the work of the employees affect interstate commerce, is a concerted activity guaranteed to such employees by Section Seven of the Labor-Management Relations Act.

III.

The final judgment of the Supreme Court of Georgia in affirming the permanent injunction denying the right of the employees of the Georgia Ports Authority to peacefully picket its properties in a controversy involving the increase in wages and the improving of working conditions of such employees, is invalid.

This principle of law has been established in *Youngdahl v. Rainfair*, 78 Sup. Court 206 (211).

CONCLUSION

Your Petitioners regret that this Petition is lengthy but the final judgment of the Supreme Court of Georgia conflicted with so many of this Court's decisions, that these Petitioners felt it necessary to enumerate herein a number of such conflicts.

In conclusion the Petitioners, with full respect to the Honorable Supreme Court of Georgia, say that there is no evidence in the record of this case which substantiates the statements and inferences in the decision of that Court to the effect:

(a) That the picketing was for an unlawful purpose.

(b) That the picketing was malevolent for the purpose of injuring the Georgia Ports Authority and aiding an unlawful strike.

(c) That the picketing was for spite and solely for the purpose of injuring the Georgia Ports Authority.

(d) That the picketing was for a malicious purpose.

(e) That the picketing was for the purpose of forcing the Ports Authority to employ only union labor.

The Supreme Court of Georgia cited cases in support of its final judgment which announced those principles of law.

There occurred no violence, threats of violence, mass picketing, invasion of private property or any other unlawful acts or conduct by any of the employees of the Ports Authority.

The activities of such employees were to induce the Ports Authority to pay such employees better wages and to improve the working conditions of such employees.

The final judgment of the Supreme Court of Georgia shows on its face that it is based entirely upon claimed violations by such employees of statutes of the State of Georgia and decisions of the Courts of Georgia which rest upon the laws of Georgia.

Such final judgment denies to such employees rights, benefits and privileges guaranteed to them by the Labor-Management Relations Act of 1947, as amended, and

denies to them the right of freedom of speech guaranteed to them by the First and Fourteenth Amendments to the United States Constitution and rights, privileges and benefits under established principles of law set out in the decisions of this Court hereinbefore cited.

Such final judgment frustrates the National Labor policy of the United States and attempts to deprive the National Labor Relations Board of its exclusive primary jurisdiction to hear and determine the issues involved in this case and impinges upon and attempts to usurp the exclusive primary jurisdiction of the Board.

Petitioners herein respectfully submit that for the reasons asserted herein, this Petition for a Writ of Certiorari should be granted.

SEWALL MYER
1410 First City National
Bank Building
Houston 2, Texas
Counsel for Petitioners

I, Sewall Myer, the Counsel of Record for Petitioners in the foregoing Petition for a Writ of Certiorari to the Supreme Court of Georgia, hereby certify that I am a member of the bar of the Supreme Court of the United States, and that I have served, in the manner hereinafter stated, a signed copy of this Petition for a Writ of Certiorari to the Supreme Court of Georgia upon each of the following named Counsel of Record in this case, for the Georgia Ports Authority, viz.:

Honorable A. F. Solms, Jr., Adams, Adams & Brennan, and Phillips and Fisher.

I further certify that such service was made in the following manner, to-wit:

I personally deposited a signed copy of this Petition for a Writ of Certiorari in a United States mail box in Houston, Texas on the 30 day of August, 1962, addressed to each of the following Counsel of Record for the Georgia Ports Authority with sufficient Air Mail postage prepaid thereon. Each such Petition for a Writ of Certiorari was sealed in an envelope addressed to such respective Counsel as follows:

Mr. A. F. Solms, Jr.
Realty Building
Savannah, Georgia

Adams, Adams & Brennan
Western Union Building
Savannah, Georgia

Fisher & Phillips
Pryor Building
26 Prior Street, N.E.
Atlanta, Georgia

I further certify that the above addresses are the respective post office addresses of such Counsel.

Accompanying this certificate is my entry of appearance in this Court as Counsel for Petitioners herein in this case.

Dated at Houston, Texas, on this the 30 day of August, 1962.

Sewall Myer

1410 First City National Bank Building
Houston 2, Texas

APPENDIX "A"

FINAL JUDGMENT OF THE SUPREME COURT OF GEORGIA

In The Supreme Court of Georgia

2 Decided Mar. 8, 1962

21552 408

INTERNATIONAL LONGSHOREMEN'S ASSN., AFL-CIO, et al.

v.

GEORGIA PORTS AUTHORITY

1. (a) The State Ports Authority is a creature of the State (Ga. L. 1945, p. 496) and in the operation of the Savannah Port Terminals acts as an instrumentality of the State for governmental purposes and is not an "employer" subject to the jurisdiction of the National Labor Relations Board. (29 U.S.C.A. (2, 3)).

(b) It appearing from the petition that the purpose of the strike by the employees of the Port Authority and the subsequent picketing of the Savannah Terminals by such employees and others was to force the authority to enter into a labor bargaining agreement with the defendant labor organizations and that such action was against the public policy of the State and unlawful, the court did not err in overruling the general demurrer and the motion to dismiss.

2. The order permanently enjoining the defendants from picketing the premises of the Port Authority was demanded by the law and evidence.

ALMAND, Justice. The bill of exceptions seeks to review orders: (1) overruling a general demurrer and a motion to dismiss a petition praying for injunctive relief and (2) enjoining permanently the defendants from picketing the premises of the plaintiff. The questions of law presented by the pleadings and evidence are (a) is the Georgia Ports Authority an employer under the provision of the National Labor Relations Act (29 U.S.C.A. § 152 (2, 3)) and subject to its jurisdiction? and (b) if it is not so subject, was it error to enjoin the defendants from engaging in peaceful picketing?

1. The general demurrer and motion to dismiss. In its petition the Georgia Ports Authority, alleging itself to be an instrumentality and a political subdivision of the State of Georgia in the operation of the Savannah State Docks and warehouses, named as defendants the national and local organizations of the International Longshoremen's Association, AFL-CIO, and two of their officers, individually and as representatives of the class composed of members of both groups. In the operation of state docks and warehouses at its Garden City Terminals and Ocean Terminals it employs a hundred or more persons. In October 1960, the Port Authority received a letter dated October 25, 1960, from the defendant, Massey, an officer of the international association, enclosing a contract on behalf of the defendant local association. The proposed agreement provided a schedule of wages, for straight time and overtime, a basic working day of eight hours, holidays, and contributions by the Ports Authority to a welfare, pension, and vacation fund for the benefit of its employees. The members of the local association were to be given employment if they were available and could satisfactorily qualify as to physical fitness and experience.

Should the union file a complaint with the Port Authority regarding the discharge of a member of the union, the matter was to be referred to a grievance committee composed of two men chosen by the union and two chosen by the Port Authority. If these four could not agree they would appoint a fifth member, and a decision by a majority of this committee would be binding on the Port Authority. Matters of seniority were to be settled by negotiation, and all disputes and controversies arising if not settled by the parties to the agreement were to be submitted to a board of arbitration. Massey in transmitting the proposed agreement said, "We are proposing that you accept same, notifying the undersigned as soon as possible preferably in fifteen (15) days of your decision."

The Ports Authority did not respond to the letter or execute the contract. It was alleged that on December 8, 1960, the defendants caused pickets to be placed in front of both entrances to the Garden City Terminals of the Ports Authority and the longshoremen, members of the local union, refused to cross the picket lines. The reason to ILA, AFL-CIO." The warehouse employees of the Ports Authority and the longshoremen, mmebers of the local union, refused to cross the picket lines. Tht reason for the picketing was to force the Ports Authority to sign the proposed contract, which proposal as to employment would be in violation of the laws of Georgia. (Code, Ann., §§ 54-902, 54-801, 54-804; Ga. L. 1947, pp. 616-621) It was further alleged that the defendants were seeking through picketing to compel the Ports Authority to recognize the defendant union organization as the exclusive bargaining agent of its warehouse employees and to execute the proposed labor contract which the

Ports Authority is not required to do as a political subdivision of the State and, as such, is immune from any picketing by the defendants.

It was further alleged that the Ports Authority in the operation of its facilities handles and dispatches cargo vital to national defense; that the general economy of Georgia is dependent upon receiving and shipping of many items of products; and that the closing of the port facilities will cause irreparable injury.

The petition prayed for a temporary and permanent injunction restraining the defendants from picketing the Ports Authority's facilities.

(a) One of the grounds of the general demurrer and the motion to dismiss is that the trial court did not have jurisdiction over the subject matter, a dispute between an employer, engaged in interstate commerce, and its employees as to wages and working conditions, but that the exclusive jurisdiction of such controversies was vested in the National Labor Relations Board under the Labor Management Act. (29 U.S.C.A. § 151). See § 152 (2, 3) of that Act which provides that the terms employer ". . . shall not include . . . any State or political subdivision thereof," and the term employee ". . . shall not include any individual employed . . . by any other person who is not an employer as herein defined."

The petitioner in this case was created by the legislative Act of 1945 (Ga. L. 1945, p. 464; as amended Ga. L. 1949, p. 778, Ga. L. 1955, p. 120, Ga. L. 1958, p. 714, Ga. L. 1960, p. 15), and all of its authority, powers, and duties are provided for by that Act. That Act created ". . . a body corporate and politic to be known as The State Ports Authority, which shall be deemed to be an instrumentality of the State of Georgia and a public cor-

poration . . . said authority shall have perpetual existence." The authority consists of five members appointed by the Governor. It was authorized to own, operate, and maintain wharves, docks, ships, piers, warehouses, and other structures and ". . . any and all facilities needful for the convenient use of the same in the aid of commerce. . ." It was granted authority to acquire property for public use by purchase, lease or condemnation, and to use and administer such sums of money appropriated by the General Assembly for the purposes of the authority. Section 15 of the Act of 1945, Code Ann. 98-217, provides, "It is hereby found, determined and declared that the creation of the Authority and the carrying out of its corporate purpose is in all respects for the benefit of the people of this State and is a public purpose and that the Authority will be performing an essential governmental function in the exercise of the power conferred upon it by this Act," and that the property and revenue bonds of the authority should be exempt from all taxation within the state. The Act, as amended, provides that the Ports Authority can sell, lease, or mortgage any of its properties only after being approved by the Governor, State Auditor, and Attorney General, and cannot purchase any real property without the consent and approval of the State Property Acquisition Commission.

Article VII, §II, Par. 1(6) of the Constitution of 1945 (Code, Ann., 2-5501, §6) authorizes the General Assembly to levy taxes to be used to construct and maintain state docks. In Sigman v. Brunswick Port Authority, 214 Ga. 332 (SE2d), we had before us the validity of certain provisions of the Act of 1945 (Ga. L. 1945, p. 1024) creating the Brunswick Port Authority. In all essential respects pertinent to the issue here, that Act is similar to the State

Ports Authority Act of the same year. It was there held that the Port Authority holds title to the property it possesses only for the benefit of the State and the public; that the authority is an instrumentality of the State or a subordinate public authority or corporation of the State; that public property embraces property held by a subordinate public corporation holding the same exclusively for the benefit of the State; that "Property used for the purpose of public convenience and welfare in the matters of public travel and transportation and to facilitate public transportation and as a dock or port operation, to provide buildings which the users of the port may lease, and in which to store and process commodities transported by water, is in the aid of commerce, and is for the promotion of public transportation, public commerce, and general welfare, and may properly be classified as public property. . . ." and that ". . . the acquisition, construction, maintenance, and operation of public ports, docks, wharves and related facilities is a function ordinarily carried on by the State, or a State instrumentality, and a legitimate function of State government."

Whether the Georgia Ports Authority in the operation of the Savannah port facilities is or is not a "political subdivision of the State" is of little importance because in view of express provisions of the Act creating the authority and the ruling in the Brunswick Port Authority case, 214 Ga. 332, supra, the operation of the Georgia Ports Authority is the action by the State for a public benefit. The Ports Authority is a creature of the State, and in the operation of the docks, wharves, etc. it does so as the instrumentality of the State for governmental purposes as authorized by the Constitution. The Ports Authority as an employer comes within the exception provision of the National Labor Relations Act and is not subject to the juris-

diction of the National Labor Relations Board. In cases similar to the one before us the National Labor Relations Board has held that it did not have jurisdiction. New Bedford Steamship Authority, 127 N.L.R.B. 1322, 46 L.R.R.M. 1173; New Jersey Turnpike Authority, 33 L.R.R.M. 1528; and Mobile Steamship Association, 8 N.L.R.B. 1297, 3 L.R.R.M. 226.

(b) It is contended by the defendants that the petition only alleges peaceful picketing of the port facilities, and that those on the picket line have as a part of the constitutional freedom of speech the right to make known their grievances against their employer as to wages and working conditions.

The petition alleges that the picketing of port terminals was done with the purpose of forcing the Ports Authority to sign a collective bargaining agreement controlling the hiring and discharging of its employees and fixing a scale of wages and working conditions; that as a political subdivision of the State it was not authorized to recognize by contract the defendant unions as the exclusive bargaining agent of its warehouse employees; and that the Ports Authority, being an agent of the State of Georgia, was immune from picketing. It was further alleged that the acts of the defendants were in violation of certain laws of this State.

Where picketing the premises of the employer is for an unlawful purpose, though peacefully, it can and should be enjoined. Woodard v. Collier, 210 Ga. 239 (SE2d). In Ellis v. Parks, 212 Ga. 540 (SE2d), it was held, "The judicial theory that peaceful picketing is a form of free speech, as announced in Carlson v. California, 310 U.S. 106 (60 Sup. Ct. 746, 84 L. Ed. 1104), which is protected by the Constitutions, both Federal and State, (Code Ann., §§ 1-801, 2-115), can not be stretched to shield

malevolent picketing for the purpose of injuring the employer and aiding an unlawful strike. Both the Supreme Court of Georgia and the Supreme Court of the United States have held that a person can not employ lawful acts for spite and solely for the purpose of injuring another, and that such malicious purpose renders the acts unlawful." In Powers v. Courson, 213 Ga. 20(1) (SE2d), it was held that where the evidence demands a finding that a picket was placed on the job for the purpose of forcing the employer to employ only union labor or be unable to comply with the terms of his contract because of the refusal of the members of other unions employed in the work to cross the picket line, constituted picketing for an unlawful purpose in violation of Code, Ann., § 54-804 and Code § 66-9906.

The trial judge in an able and well considered opinion in this case concluded that ". . . it is contrary to the public policy of the State of Georgia for state employees to strike . . ." citing in support of this finding like rulings of other jurisdictions. State v. Brotherhood of R. Trainmen, 37 Cal. (2d) 412 (232 Pac.2d 857), cert. den. 342 U.S. 876; Nutter v. City of Santa Monica, 74 Cal. App. (2d) 292 (168 Pac.2d 741); Port of Seattle v. Longshoremens' Union, —Wash.— (325 Pac.2d 1099, 42 L.R.R.M. 2462); and Norwalk Teachers' Association v. Board of Education, 138 Conn. 269 (83 A.2d 482, 31 A.L.R.2d 113). See Springfield v. Clause, 356 Mo. 1239 (206 S.W.2d 539).

This conclusion is fully sustained by the recent Act of the General Assembly. On the 3rd day of March, 1962, the Governor approved House Bill No. 495, which Act provides, "No person holding a position by appointment or employment in the government of the State of Georgia or any agency, authority, board, commission, or public institution thereof shall promote, encourage or participate

in any strike, . . . The word 'strike', as used herein, shall mean the failure to report for duty, the willful absence from one's position, the stoppage or deliberate slowing down of work, or the withholding, in whole or in part, of the full, faithful and proper performance of the duties of employment, for the purpose of inducing, influencing or coercing a change in the condition, compensation, rights, privileges or obligations of State employment; . . . Any person not a State employee who shall knowingly incite, agitate, influence, coerce, persuade or picket to urge a State employee to strike shall be deemed guilty of a misdemeanor, . . ." This court will apply the law as it exists at the time of its judgment if such application does not affect a previously vested interest. City of Valdosta v. Singleton, 197 Ga. 194, 208 (S.E. 2d). We, therefore, hold that the State Ports Authority in the operation of the docks and warehouses at its Savannah terminals was without authority to enter into an agreement with any third party fixing the terms and conditions of the employment of personnel working for the authority. It appearing from the petition that the purpose of the strike by its employees and the subsequent picketing of the terminals by its employees and others was to force the authority to enter into a bargaining agreement with the defendants. Such action being against the public policy of the State was unlawful under the Act of 1962.

It was not error to overrule the general demurrer and the motion to dismiss.

2. After a hearing the court granted an interlocutory injunction. When the case came on for the grant of a permanent injunction counsel for all the parties made motions for a summary judgment. It was agreed by the parties that the trial judge, without the intervention of

a jury, could enter a final decree upon the pleadings and evidence adduced at the hearing on the prayers for an interlocutory injunction. The evidence supported the allegations in the petition that the international union did make a demand upon the Ports Authority to sign a collective bargaining agreement; that on the morning of December 8, 1960, picket lines were established at the main entrances of the port terminals, the pickets carrying signs reading "State Docks Unfair to I.L.A., American Federation of A.F.L.-C.I.O. State Docks unfair to I.L.A.-C.I.O."; and that employees of the Ports Authority, members of the union and longshoremen's union members of other employers would not cross the picket line. The result was a complete stoppage of the operation of the port facility which handled 30% to 35% of the tonnage coming into the port of Savannah. There was evidence that in the purchase of the property by the authority there was involved some $800,000 of State funds. The labor policy of the "employees" is established by the board of directors of the Ports Authority. There was evidence on behalf of the union that the local ILA union did not authorize the strike but did direct the establishment of the picket lines for the purpose of advertising peacefully the unfair labor practices of the Ports Authority; and that seventy employees of the authority were members of the local union and fifteen of this number voted to picket. The result of the picketing was that the operations of the authority and other private groups in the loading, unloading, docking, and warehousing ceased.

We are of the opinion that under the ruling in the first division of this opinion and the evidence, the order granting a permanent injunction was not only authorized but demanded.

Judgment Affirmed. All the Justices concur.

APPENDIX "B"

PERTINENT PORTIONS OF THE CONSTITUTION OF THE STATE OF GEORGIA

Article VII, Section II, Par. 1(6), provides:

"The powers of taxation of the whole state shall be exercised by the General Assembly for the following purposes only:

"(6) To construct and maintain State buildings and a system of State highways, airports and docks."

PERTINENT PORTIONS OF THE STATUTES OF THE STATE OF GEORGIA

Georgia Code Annotated:

§4-902, Volume 16, Page 216, provides:

"No individual shall be required as a condition of employment or of continuance of employment, to be or remain a member or an affiliate of a labor organization or to resign from or to refrain from; membership in or affiliation with a labor organization."

§4-801, Volume 16, Page 214, provides:

"It shall be unlawful for any person, acting alone or in concert with one or more other persons, by the use of force, intimidation, violence or threats thereof, to prevent or attempt to prevent any individual from quitting or continuing in the employment of or from accepting or refusing employment by any employer or from entering or leaving any place of employment of such employer."

2-5501, Volume 1, Page 591, provides:

"The powers of taxation over the whole State shall be exercised by the General Assembly for the following purposes only:

"(6) To construct and maintain State Buildings and a system of State highways, airports and docks."

54-804, Volume 16, page 215, provides:

"It shall be unlawful for any person acting alone or in concert with one or more other persons to compel or attempt to compel any person to join or refrain from joining any labor organization or to strike or refrain from striking against his will, by any threatened or actual interference with his person, immediate family or physical property or by any threatened or actual interference with the pursuit of lawful employment by such person or by his immediate family."

Georgia Code Annotated:

98-201 through 219, Volume 28, Page 25, created the Georgia Ports Authority.

The pertinent portions thereof are 98-202, 98-205 (9), (10), (13) as follows:

98-202, Volume 28, Page 25, provides:

"There is hereby created a body corporate and politic, to be known as the Georgia Ports Authority, which shall be deemed to be an instrumentality of the State of Georgia and a public corporation and by the name, style and title, the said body may contract and be contracted with, sue and be sued, implead and be impleaded and complain and defend in all courts of law and equity."

98-205, Volume 28, Page 27, provides:

"The Authority shall have powers:

"(9) To exercise any power usually possessed by private corporations performing similar functions, which are not in conflict with the Constitution and laws of this State."

"(10) To do all things necessary or convenient to carry out the powers expressly given in this chapter."

"(13) To do any and all other acts and things in this Chapter authorized or required to be done, whether or not included in the general powers in this Section mentioned."

98-217, Volume 28, Page 36, provides:

"It is hereby found, determined and declared that the creation of the Authority and the carrying out of its corporate purpose is in all respects for the benefit of the people of this State and is a public purpose and that the Authority will be performing an essential governmental function in the exercise of the power conferred upon it by this chapter and this State covenants with the holders of the bonds that the Authority shall be required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction, control, possession or supervision or upon its activities in the operation or maintenance of the facilities erected, maintained or acquired by it or any fees, rentals or other charges for the use of such facilities or other income received by the Authority and the bonds of the Authority, their transfer and the income therefrom shall at all times be exempt from taxation within the State."

The pertinent portions of a recent statute of the State of Georgia signed by the Governor on March 3, 1962, appears in the final judgment of the Supreme Court of Georgia, decided on March 8, 1962.

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IN THE

Supreme Court of The United States

OCTOBER TERM, 1961

NO. 928

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL NUMBER 1810, RALPH A. MASSEY AND THOMAS J. BURKE,

Petitioners,

versus

GEORGIA PORTS AUTHORITY,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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GEORGIA PORTS AUTHORITY

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

PRELIMINARY STATEMENT

Pursuant to Rule 40, paragraph 3, of the Rules of this Honorable Court, Respondent adopts as correct the statement contained in the Petition with respect to OPINION BELOW (Petition, p. 2), except that Appendix A to the petition on page 21, beginning at line 16, should read as follows:

> "The Ports Authority did not respond to the letter or execute the contract. It was alleged that on December 8, 1960, the defendants caused pickets to be placed before both entrances to the Garden City Terminals of the Ports Authority carrying signs reading 'States Docks Unfair to ILA, AFL-CIO'. The warehouse employees of the Ports Authority and the longshoremen, members of the local union, refused to cross the picket lines. The

reason for the picketing was to force the Ports Authority to sign the proposed contract, which proposal as to employment would be in violation of the laws of Georgia. (Code, Ann., Secs. 54-902, 54-801, 54-804; Ga. L. 1947, pp. 616-621) It was further alleged that the defendants were seeking through picketing to compel the Ports Authority to recognize the defendant union organization as the exclusive bargaining agent of its warehouse employees and to execute the proposed labor contract which the Ports Authority is not required to do as a political subdivision of the state and, as such, is immune from any picketing by the defendants."

Respondent also adopts as correct the statements contained in the petition with respect to CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED (Petition, pp. 3-5).

Respondent adopts Petitioners' STATEMENT OF THE CASE.

JURISDICTION

While the Supreme Court of the United States has jurisdiction to review the decision rendered by the Supreme Court of Georgia [28 USCA 1257 (3)], the Respondent respectfully submits that in the exercise of sound judicial discretion the United State Supreme Court will deny review since the decision of the Georgia Supreme Court did not involve a federal substantive question not heretofore decided by this Court nor was such decision discordant with applicable decisions of this court.

QUESTIONS FOR DECISION UPON PETITION FOR CERTIORARI

1.

Whether or not sound judicial discretion will allow a writ of certiorari herein when the decision

of the Supreme Court of Georgia has not decided a federal question of substance not theretofore decided by the Supreme Court of the United States and does not conflict with any decisions thereof.

2

Whether or not the right of a State to be free from strikes and picketing is abrogated by any other right or privilege under either the Constitution of the United States or Federal Legislative Enactment.

REASONS FOR REFUSING TO GRANT THE WRIT OF CERTIORARI

POINT ONE

THE GEORGIA PORTS AUTHORITY IS AN INSTRUMENTALITY OF THE STATE OF GEORGIA AND THEREFORE NOT AN EMPLOYER WITHIN THE MEANING OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED.

The decision of the Supreme Court of Georgia does not, as petitioners allege, establish any new principles of law which infringe upon rights guaranteed to employees under Section 7 of the National Labor Relations Act, as amended.

The National Labor Relations Act, as amended, Section 2(2), states in part as follows:

> "The term 'employer' . . . shall not include . . . any state or political subdivision thereof." 29 U.S.C.A. Sec. 152(2)

Section 2(3) of the Act states in part as follows:

> "The term 'employer' . . . shall not include any individual employed . . . by any . . . person who is not an employer as herein defined." 29 U.S.C.A. Sec. 152(3)

Thus, the rights enjoyed by employees under Section 7 of the Act are accorded only those who are employees within the meaning of the Act. Since political subdivisions of a state are specifically excluded from the term "employer", employees of these political subdivisions cannot be "employees" within the meaning of the Act. Therefore, the principal issue with respect to the propriety of the picketing of the Georgia Ports Authority is whether the Georgia Ports Authority is a political subdivision of the State of Georgia. It is submitted that this issue is well settled by legislative enactment and judicial precedent.

Section 98-202, Code of Georgia, states as follows:

> "Creation of Authority as body corporate; powers. —There is hereby created a body corporate and politic, to be known as the Georgia Ports Authority, which shall be deemed to be an instrumentality of the State of Georgia and a public corporation, and by that name, style, and title the said body may contract and be contracted with, sue and be sued, implead and be impleaded, and complain and defend in all courts of law and equity. (Acts 1945, pp. 464, [illegible]; 1949, pp. 778, 779; 1955, pp. 120, 121)

In addition to this declaration by the Georgia legislature, the Supreme Court of Georgia has held that such bodies are instrumentalities of the State. *Signan v. Brunswick Port Authority*, 214 Ga. 332, 104 S.E. 2d 467. This specific holding is also found in the opinion of the Supreme Court of Georgia which is the subject of this petition. Unless the legislature and highest Court of the State of Georgia are deemed unable to determine which units are political subdivisions of the State of Georgia, the Georgia Ports Authority is a political subdivision and instrumentality of that State.

POINT TWO

IT IS AGAINST THE PUBLIC POLICY OF THE STATE OF GEORGIA FOR STATE EMPLOYEES TO STRIKE.

The trial court held and the Supreme Court of Georgia affirmed that as a matter of law it is against the public policy of the State of Georgia for state employees to strike. This holding is in accord with the decisions reached by the courts in other states faced with the same or similar problems. See, e.g. *State v. Brotherhood of R. Trainmen*, 37 Cal. 2d 413, 232 P. 2d 857, cert. den. 342 U.S. 876; *Nutter v. City of Santa Monica*, 74 Cal. App. 2d 831, 168 P. 2d 741; *Port of Seattle v. Longshoremen's Union*, ____ Wash. ____, 324 P. 2d 1099; *Norwalk Teachers' Asso. v. Board of Education*, 138 Conn. 269, 83 A. 2d 482.

Under such circumstances, the Supreme Court of Georgia found the picketing to be for an illegal purpose and, therefore, enjoinable under Georgia law. *Woodard v. Collier*, 210 Ga. 239, 78 S.E. 2d 526; *Ellis v. Parks*, 212 Ga. 540, 93 S.E. 2d 708.

POINT THREE

THE DECISION BELOW DOES NOT CONFLICT WITH ANY DECISION OF THIS COURT, ANY STATUTE OR THE CONSTITUTION OF THE UNITED STATES.

The decision of the Georgia Supreme Court in no way conflicts with the Constitutional guarantee of free speech under the First and Fourteenth Amendments to the United States Constitution. This Court has repeatedly recognized the limitations necessarily im-

posed on such rights. For example, when the Hatch Act was held constitutional although it abridged the rights of governmental employees to engage in certain political activities, the Court held:

> "Of course, it is accepted constitutional doctrine that these fundamental human rights are not absolute. The requirements of residence and age must be met. The essential rights of the First Amendment in some instances are subject to the elemental need for order without which the guarantees of civil rights to others would be a mockary."
>
> *United Public Workers v. Mitchell*, 330 U.S. 75, 95.

This court has repeatedly held that picketing for an unlawful object is not constitutionally privileged and may be banned by the States. *NLRB v. Fansteel Corporation*, 306 U.S. 240 (sitdown strikes); *Southern SS Co. v. NLRB*, 316 U.S. 31 (mutinies); *Allen-Bradley Local 1111 v. WERB*, 315 U.S. 749 (violent strikes and picketing); *NLRB v. Sands Manufacturing Co.*, 306 U.S. 332 (picketing in violation of contract). As this Court stated in *Hughes v. Superior Court*, 339 U.S. 460:

> "The domain of liberty, withdrawn by the Fourteenth Amendment from encroachment by the states, *Palko v. Connecticut*, 302 U.S. 319, 327, 58 S.Ct. 149, 153, 82 L.Ed. 288, 293, no doubt includes liberty of thought and appropriate means for expressing it. But while picketing is a mode of communication, it is inseparably something more and different. Industrial picketing is more than free speech, since it involves patrol of a particular locality and since the very presence of a picket line may induce action of one kind or another, quite irrespective of the nature of the ideas which are being disseminated. . . However

general or loose the language or opinions, the specific situations have controlled decision. It has been amply recognized that picketing, not being the equivalent of speech as a matter of fact, is not its inevitable legal equivalent. Picketing is not beyond the control of a State if the manner in which picketing is conducted or the purpose which it seeks to effectuate gives ground for its disallowance. . . . A state is not required to tolerate in all places and all circumstances even peaceful picketing by an individual." 339 U.S. at 464-65.

This Court further defined the state's right to enjoin picketing in *Local Union No. 10 v. Graham*, 345 U.S. 192, wherein the Court said:

"The basic question here is whether the Commonwealth of Virginia, consistently with the Constitution of the United States, may enjoin peaceful picketing where it is carried on for purposes in conflict with the Virginia Right to Work Statute. A question also before us is whether the record in this case justifies the findings, made below, that picketing was for such purposes. We answer each in the affirmative." 345 U.S. at 193.

Thus, this court has recognized the precise holding of the court below: that a State has the right to limit strikes and picketing carried on for an illegal purpose.

POINT FOUR

THE NATIONAL LABOR RELATIONS BOARD HAS CONSISTENTLY REFUSED TO ASSERT JURISDICTION OVER EMPLOYERS SIMILAR TO THE GEORGIA PORTS AUTHORITY.

"Political subdivision", *within the meaning of this particular Act*, has been defined by the National Labor Relations Board on several occasions when it was

called upon to assert jurisdiction over a particular employer or labor dispute. The construction given the term "political subdivision" by the NLRB has unanimously and continually denied Federal jurisdiction over employers like and similar to the Respondent here. This, of course, means that this area of regulation has not been preempted and state courts and agencies may take appropriate action. The term should be defined then in the light of whether or not the NLRB will assert jurisdiction.

The National Labor Relations Board in the matter of *New Bedford Steamship Authority*, 127 NLRB 1322, 46 LRRM 1173 (1960), concluded that the New Bedford Steamship Authority was not an "employer" over whom the Board had jurisdiction. In reaching this conclusion, the Board relied principally on two factors:

(1) The statute creating the Authority contained the categorical statement that the Authority is performing "essential government functions".

(2) The Authority's property and income are tax exempt.

Section 98-217, Code of Georgia, states as follows:

"Declaration of public purpose in creation of Authority. Tax Exemption.—It is hereby found, determined and declared that the creation of the Authority and the carrying out of its corporate purpose is in all respects for the benefit of the people of this State and is a public purpose and that the Authority will be performing an *essential governmental function* in the exercise of the power conferred upon it by this Chapter and *this State covenants with the holders of the bonds that the Authority shall be required to pay no taxes* or assessments upon any of the property

> acquired by it or under its jurisdiction, control, possession or supervision or upon its activities in the operation or maintenance of the facilities erected, maintained or acquired by it or any fees, rentals or other charges for the use of such facilities or other income received by the Authority, their transfer, and the income therefrom shall at all times be exempt from taxation within the State (Acts 145, pp. 464, 477) (Emphasis added)

The language of the above-cited Georgia Code Section clearly brings the Georgia Ports Authority within factors (1) and (2) above from which the National Labor Relations Board concluded that it did not have jurisdiction.

In the *New Bedford* case, the Board notes that the Authority's bonds were classified as bonds of the Commonwealth of Massachusetts, and the bonds of the Georgia Ports Authority are not bonds of the State of Georgia. This differentiating fact becomes immaterial in view of the decision of the NLRB in *New Jersey Turnpike Authority*, 33 LRRM 1528 (cited *with approval* in the *New Bedford* case). There, the NLRB refused to assert jurisdiction over an Authority whose bonds were not backed by the faith and credit of the state. The following decision is quoted in its entirety:

> "Regional Director is sustained in his dismissal of representation petition requesting a union of toll collectors employed by New Jersey Turnpike Authority in operation of its toll highway within the statefl
>
> The New Jersey Turnpike Authority is not an employer within meaning of Section 2(2) of the Act in view of powers, duties, and obligations given to it by state legislature in establishing it as part of state highway department.

"Local 211 of the Textile Workers (AFL) petitioned for a unit of the Turnpike's toll collectors.

"The Turnpike Authority comprises three members appointed by the Governor for a term of five years with advice and consent of the Senate. It was established on January 31, 1950, by Act of the New Jersey State Legislature for the purpose of constructing, operation, and maintaining turnpike projects by issuance of bonds and collection of tolls. The Authority may acquire, hold and dispose of both real and personal property and exercise the power of eminent domain to acquire real property. Neither the faith and credit of the state nor its taxing power is pledged to payment of bonds issued by the Authority, but the bonds and property of the Authority are exempt from taxation."

New Jersey Turnpike Authority (New Jersey). Case No. 4-RC-2245, April 15, 1954, Decisions on Appeals from interim Rulings of Regional Director.

Similarly, in the case of *Mobile Steamship Association, et al*, 8 NLRB 1297, 3 LRRM 226, the National Labor Relation Boards dismissed a representation petition insofar as it pertained to the Alabama State Docks Commission "since that organization is a division of the State of Alabama". The Board held that the Commission was not an "employer" within the meaning of Section 2(2) of the Act. Parenthetically, it should be noted that the definition of "employer" contained in the Act has not been amended since that decision.

It appears abundantly clear that the National Labor Relations Board would not assert jurisdiction over the Georgia Ports Authority since, in view of the Board's

prior decisions, the Authority is not an "employer" within the meaning of Section 2(2) of the Act.

It is also clear that if the National Labor Relations Board is without jurisdiction, the Superior Court of Chatham County was the proper forum for this proceeding and these parties.

POINT FIVE

THE CASES CITED BY PETITIONER AS HAVING ESTABLISHED LAW CONTRARY TO THAT EXPRESSED BY THE COURT BELOW ARE INAPPLICABLE IN THE INSTANT CASE.

The decisions cited by petitioner will be discussed as they are presented on page 12 of the Petition.

In *Weber v. Anheuser Busch*, 348 US 468. there was no contention that the employer was a political subdivision of the state. The corporation involved was the Anheuser Busch Company, a manufacturer of beer, engaged in interstate commerce. The holding in this case can be summarized by saying that suits for injunction based upon conduct violative of the National Labor Relations Act, as amended, as unfair labor practices must be brought before the National Labor Relations Board by an employer who is an "employer" within the meaning of the Act.

Similarly, the case of *Amalgamated Association v. Wisconsin Employment Relations Board*, 340 U.S. 383, is inapposite because involved were two privately owned public utilities. No contention was made that either company was a political subdivision of the State of Wisconsin.

In *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, *Amalgamated Meat Cutters v. Fairlawn*, 353 U.S. 20, and *Guss v. Utah Labor Relations Board*, 352 U.S. 817, this Court established the principle that a refusal to act by the National Labor Relations Board did not entitle the States to power over activities they otherwise would be preempted from regulating. These cases did not involve employers not subject to the Act and, therefore, the principle is wholly inapplicable.

In *Plumbers, Steamfitters, etc. v. County of Door*, 359 U.S. 354, the political subdivision of the state, the County of Door, had no dispute with the Union and, therefore, that case involves different principles from those applied in the case at bar. In *Door*, the county had joined with two contractors in seeking a state court injunction against peaceful picketing. This Court found the county a "person" within the meaning of Section 2(1) of the National Labor Relations Act, as amended. This in no way changes the definition of employer within the meaning of Section 2(2) of the National Labor Relations Act, as amended. Similarly, in *Local Union No. 25 v. New York, New Haven and Hartford R.R. Co.*, 350 U.S. 155, this Court held that a railroad was a person within the meaning of Section 2(1) of the National Labor Relations Act, as amended, and, therefore, could avail itself of the National Labor Relations Board to protect against secondary boycotts. Here, as in *Door*, supra, the employer had no direct relationship with the union but was incidentally involved.

It is submitted that each of the above cited cases is inapplicable to the case at bar since none involves analogous circumstances wherein the two crucial facts present in the instant case are present, i.e., none in-

volves an employer not subject to the Act with a primary dispute with the union.

CONCLUSION

Respondent respectfully submits that this Petition shows no basis upon which the Writ of Certiorari should be granted. Respondent submits further that it has shown this Honorable Court that the decision rendered below was in strict accordance with previous decisions of this Court and adjudicated no new federal question of substance. For these reasons, Respondent respectfully requests that the Writ of Certiorari be denied.

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